

**CHAPTER NO. 1046**

**HOUSE BILL NO. 3242**

**By Representative Head, Kent, Ronnie Cole, Ralph Cole, Armstrong, Rinks, Rhinehart, Beavers, McDonald, Sands, Davidson, McMillan, Godsey, Winningham, Davis, Huskey, Lois DeBerry, Pinion, Kisber, Roach, Hargrove, McDaniel, Hargett, Newton, Goins, White, Walley, McAfee, Wood, Mumpower, Scroggs, Sargent, Hicks, Pleasant, Mike Walker, Dunn, Ford, Boyer, Sharp, Gunnels, Kerr, McKee, Halteman Harwell, Haley, Hassell, Patton, Bird, Whitson, McDonald, Brenda Turner, Maddox, Stulce, Bittle, Givens, Hood, Eckles, Ferguson, Curtiss and Mr. Speaker Naifeh**

**Substituted for: Senate Bill No. 3270**

**By Senators Haun, Williams**

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 1; Title 39, Chapter 13, Part 2 and Title 55, Chapter 10, Part 4, relative to the offenses of driving under the influence of an intoxicant and driving while impaired and the consequences of such offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-403, is amended by deleting from the fourth sentence of subsection (a)(1) the language "or subsequent".

SECTION 2. Tennessee Code Annotated, Section 55-10-403, is further amended by inserting the following between the fourth and fifth sentences of subsection (a)(1):

Notwithstanding any other provision of law to the contrary, the fourth or subsequent conviction shall be a Class E felony punishable by a fine of not less than three thousand dollars (\$3,000) nor more than fifteen thousand dollars (\$15,000); by confinement for not less than one hundred and fifty (150) consecutive days, to be served day for day, nor more than the maximum punishment authorized for the appropriate range of a Class E felony; and the court shall prohibit the person from driving a motor vehicle for a period of five (5) years. For the provisions of the preceding sentence to apply, at least one (1) of the violations of §55-10-401 must occur on or after July 1, 1998.

SECTION 3. Tennessee Code Annotated, Section 55-10-415, is amended by deleting from subsections (c), (d) and (e) the language "driving while impaired" and substituting instead the language "underage driving while impaired".

SECTION 4. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following new section to be designated as § 55-10-418:

Section 55-10-418.

(a) A person twenty-one years (21) of age or older who drives or is in physical control of a motor vehicle while such person's ability to safely operate the vehicle is impaired as the proximate result of the consumption or ingestion of alcohol, drugs, any other intoxicant or any combination thereof commits the offense of adult driving while impaired.

(b) Upon arresting a person for a violation of this section, a law enforcement officer shall use the factors set out in Tennessee Code Annotated, Section 40-7-118, to determine the proper custodial disposition of such person.

(c) For purposes of proving a violation of this section, evidence that at the time of the offense there was eight-hundredths of one percent (.08%) or more but less than ten-hundredths of one percent (.10%) by weight of alcohol in the defendant's blood shall create a presumption that the defendant's ability to safely operate a motor vehicle was sufficiently impaired by such alcohol to constitute a violation of this section.

(d)

(1) A person's first conviction for adult driving while impaired is a Class B misdemeanor punishable only by a mandatory fine of five hundred dollars (\$500). All proceeds from the fine imposed by this section shall be transmitted to the Commissioner of the Department of Health for deposit in the special "alcohol and drug addiction treatment fund" administered by such department.

(2) At the time of sentencing a person for a first conviction for adult driving while impaired, the defendant shall be advised both orally and in writing that the penalty for a second or subsequent violation of this section is by law substantially enhanced and will be the same in all respects as the penalty for a second or subsequent conviction for driving under the influence of an intoxicant. Provided, however, all adverse consequences resulting from a conviction for violating this section shall be applicable and remain in effect regardless of whether the person is advised orally or in writing of the penalties for second or subsequent violations. Such consequences shall include counting any such conviction as a prior conviction for the purpose of imposing enhanced punishment for subsequent convictions.

(3)

(A) A person's second or third conviction for adult driving while impaired is a Class A misdemeanor and shall be punished in all respects the same as is provided in Tennessee Code Annotated, Section 55-10-403, for a second or third conviction for driving under the influence of an intoxicant.

(B) A person's fourth or subsequent conviction for adult driving while impaired is a Class E felony and shall be punished in all respects the same as is provided in Tennessee Code Annotated, Section 55-10-403, for a fourth or subsequent conviction for driving under the influence of an intoxicant.

(e) The provisions of subsection (d)(1) shall only apply to a person who violates the provisions of this section for the first time and who does not have a prior conviction for an alcohol-related offense. A person who violates this section for the first time but who has one (1) or more prior convictions for the offense of driving under the influence of an intoxicant as prohibited by § 55-10-401, vehicular assault as prohibited by § 39-13-106, vehicular homicide as prohibited by § 39-13-213(a)(2), or aggravated vehicular homicide as prohibited by § 39-13-218, shall be punished in all respects the same as is provided in § 55-10-403 for a second or subsequent violation of § 55-10-401. A conviction for any of the

offenses set out in this subsection that occurred in another state shall, for purposes of sentencing, be counted the same as if it had occurred in this state.

(f) Within thirty (30) days after the conviction of a person for violating this section, the sentencing judge or the clerk of the sentencing judge's court shall prepare and immediately forward to the Department of Safety an abstract of the record of the court covering the case in which the person was so convicted. The abstract shall be certified as true and correct by the judge or clerk preparing it.

(g)

(1) Notwithstanding any other provision of law to the contrary, the driver of a motor vehicle who is charged with, pleads guilty to or is found guilty of a violation of this section shall not be eligible for pretrial diversion pursuant to Tennessee Code Annotated, Title 40, Chapter 15 or post disposition diversion pursuant to Tennessee Code Annotated, Section 40-35-313.

(2) Notwithstanding any other provision of law to the contrary, unless one of the conditions set out in Tennessee Code Annotated, Section 40-32-101(a)(1) occurs, the public records of the driver of a motor vehicle who is charged with a violation of this section shall not be removed, destroyed or expunged.

SECTION 5. Tennessee Code Annotated, Section 55-10-403, is amended by deleting subsection (o) and substituting instead the following:

(o) For the sole purpose of enhancing the punishment for a violation of § 55-10-401, a prior conviction for a violation of Tennessee Code Annotated, Section 39-13-213(a)(2), 39-13-106, 39-13-218 or 55-10-418 shall be treated the same as a prior conviction for a violation of § 55-10-401.

SECTION 6. Tennessee Code Annotated, Section 55-10-403, is amended by deleting subsection (g)(2) and substituting instead the following:

(2) In the prosecution of second or subsequent offenders, the indictment or charging instrument must allege the prior conviction or convictions for violating any of the provisions of §§ 55-10-401, 39-13-213(a)(2), 39-13-106, 39-13-218 or 55-10-418 setting forth the time and place of each prior conviction or convictions. When the state uses a conviction for the offense of driving under the influence of an intoxicant, aggravated vehicular homicide, vehicular homicide, vehicular assault or adult driving while impaired committed in another state for the purpose of enhancing the punishment for a violation of § 55-10-401, the indictment or charging instrument must allege the time, place and state of such prior conviction.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. Tennessee Code Annotated, Section 55-10-406(a), is amended by adding the following as a new subdivision thereto:

( ) Any person who violates the provisions of this section by refusing to submit to the test pursuant to subdivision (3) shall be charged by a separate warrant or citation that does not include any charge of violating § 55-10-401 that may arise from the same occurrence.

SECTION 9. This act shall take effect July 1, 1998, the public welfare requiring it.

**PASSED: April 29, 1998**

  
JIMMY RAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 18<sup>th</sup> day of May 1998**

  
DON SUNDQUIST, GOVERNOR